

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

-----X
JENNIFER M. LAMARCA,

CIVIL ACTION NO.:

Plaintiff,

v.

JAMES LEE MCINTOSH and
GENERAL MOTORS, LLC,

Defendants.
-----X

NOTICE OF REMOVAL

TO THE HONORABLE CHIEF JUDGE AND JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

Now comes Defendant, General Motors LLC (“GM LLC”), and hereby gives notice of removal of this action from the Supreme Court of Erie County, New York, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of this Notice, GM LLC states:

1. The above-captioned action was commenced against GM LLC by the filing of a Summons and Verified Complaint in the Supreme Court of Erie County on or about December 13, 2018. Copies of Plaintiff’s Summons and Verified Complaint are attached as Exhibit A.
2. This Notice of Removal is filed within 30 days after service of the Summons and Verified Complaint on GM LLC via certified mail on Corporation Service Company on December 27, 2018, pursuant to 28 U.S.C. § 1446(b).

3. 28 U.S.C. § 1446(b)(1)(A) provides that “all defendants who have been properly joined and served must join in or consent to the removal of the action.”

4. Upon information and belief, Defendant, James Lee McIntosh, has not been served with Plaintiff’s Complaint at the time of this filing. Therefore, his consent is not necessary to effectuate removal.

5. Upon information and belief, Plaintiff, Jennifer M. Lamarca, is a citizen of the State of New York. Ex. A, ¶ 1.

6. Upon information and belief, Defendant, James Lee McIntosh, is a citizen of the State of Michigan.

7. Defendant, GM LLC, is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in the State of Michigan.

8. At the time of the filing of Plaintiff’s Verified Complaint and at the time of this removal, there is diversity of citizenship amongst the parties pursuant to 28 U.S.C. § 1332(a)(1).

9. In her Verified Complaint, Plaintiff alleges that she was the passenger of a motorcycle operated by Peter John Mazzeo, Jr., that was traveling southbound on Michigan Avenue, with the right-of-way in their favor, when the motorcycle was hit by the vehicle operated by Defendant James Lee McIntosh. Ex A, ¶ 6.

10. It is alleged that Defendant McIntosh caused the accident because he made an illegal left hand turn from the northbound direction of Michigan Avenue when he failed to yield the right-of-way to Mazzeo, Jr. *Id.*

11. Plaintiff claims that she sustained “severe internal and external injuries” in the collision, including, “but not limited to, multiple contusions and abrasions on or about her hands, arms, legs and knees; bulging protruding, and/or frank herniations of intervertebral discs in her cervical spine from C2 to C7, requiring . . . an anterior cervical discectomy and fusion at level C5-6, numbness and tingling down her right arm and lower extremities, limited range of cervical and lumbar spinal motion and strain and sprain, thereby resulting in “great pain, distress and mental anguish.” Ex A, ¶ 9.

12. She claims to have incurred “costs for medical, hospital, pharmaceutical, and related services,” and that she reasonably expects to incur further costs for similar services, and loss of income due to her the inability to attend “to her usual and customary duties and occupation for an extended period of time” and. Ex A, ¶¶ 9-10.

13. Based on Plaintiff’s claims, the amount in controversy in this matter exceeds Seventy-Five Thousand Dollars (\$75,000.00), and therefore satisfies the amount-in-controversy threshold for federal diversity jurisdiction. 28 U.S.C. § 1332(a) and § 1441(a).

14. Written notice of the filing of this Notice will be served on Plaintiff as required by 28 U.S.C. §1446(d).

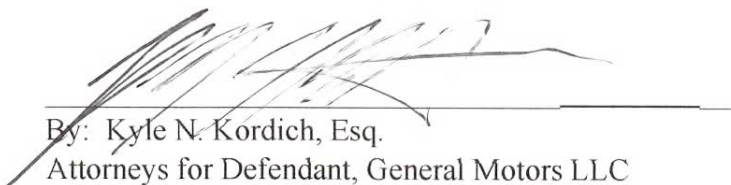
15. A copy of this Notice will be filed with the Clerk of the Supreme Court of Erie County, New York, as provided by 28 U.S.C. §1446(d).

16. Pursuant to 28 U.S.C. §1446(a), all process, pleadings and orders are attached as Exhibit B.

WHEREFORE, Defendant, General Motors LLC, prays that it may effect the removal of this action from the Supreme Court of Erie County, New York to the United States District Court for the Western District of New York.

Dated: Albany, New York
January 22, 2019

THORN GERSHON TYMANN AND BONANNI, LLP



By: Kyle N. Kordich, Esq.
Attorneys for Defendant, General Motors LLC
5 Wembley Court, PO Box 15054
Albany, New York 12212-5054
Bar Roll No. 510086

OF COUNSEL:

Monica V. Pennisi Marsico, Esq.
Jonathan A. Delgado, Esq.
RICCI TYRRELL JOHNSON & GREY
1515 Market Street, Suite 700
Philadelphia, PA 19102
Attorneys for Defendant,
General Motors LLC

TO: Jon Ross R. Wilson, Esquire
The Law Office of Jon Louis Wilson
The Centennial House
111 Ontario Street
Lockport, NY 14094
Counsel for Plaintiff

James Lee McIntosh
1617 E. Moore Road
Milford, MI 4381
Unrepresented Party